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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Definition of gross and large-scale violations of human rights as an international crime

Working paper submitted by Mr. Stanislav Chernichenko in accordance with Sub-Commission decision 1992/109

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INTRODUCTION

1. At the forty-fourth session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities a working paper (E/CN.4/Sub.2/1992/51) was submitted by Mr. S. Chernichenko under agenda item 6, "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII)". The paper proposed that, in order to improve the international legal basis for international cooperation in the field of human rights and, in particular, to enhance the effectiveness of efforts to combat human rights violations, the Sub-Commission should consider producing a draft declaration to the effect that gross and large-scale human rights violations perpetrated on the orders of a Government or with its sanction would be considered international crimes.

2. The Sub-Commission did not have the time to consider the question at its forty-fourth session. It adopted decision 1992/109 of 27 August 1992 in which it authorized Mr. S. Chernichenko to submit a more detailed working paper on this subject containing, inter alia, provisions that could be included in an appropriate declaration, and decided to consider the question at its forty-fifth session under agenda item 4.

3. It is obvious that further measures to combat human rights violations at the international level are needed, notably refinements in international law. Gross and large-scale violations of human rights represent the most serious threat to the international community. The measures taken must therefore be directed above all at eliminating and preventing this category of violation. The first step could be to declare that gross and large-scale human rights violations ordered or sanctioned by Governments shall be regarded as international crimes.

4. This raises a number of questions. Since for various reasons not all human rights violations can be categorized as international crimes, a way must be found of classifying them. It will also be necessary to examine the notion of international crime and those categories of human rights violation which are already regarded as international crimes. Naturally, the proposal to classify as international crimes all gross and large-scale human rights violations ordered or sanctioned by a Government, i.e. to broaden the definition of such crimes to include certain types of gross and large-scale violation which are at present outside it, itself needs to be justified. Finally, we must also consider in what form this should be stated and formulate not only a general principle but also some specific provisions which follow from it.

I. CLASSIFICATION OF HUMAN RIGHTS VIOLATIONS (TYPES OF VIOLATION)

A. General remarks

5. Human rights being those rights and freedoms which are fundamental to the definition of an individual's legal status in his community, the prerequisite for decent human existence in modern society, not all infringements of an

individual's rights can be regarded as human rights violations. For example, the unlawful imposition of some minor tax or duty cannot be regarded as a human rights violation.

6. Violations of human rights may affect individuals or they can be large-scale in nature, indicating a poor human rights situation in a given State. Furthermore, both types of violation may be relatively trivial or more serious or even gross. Lastly, they may be isolated occurrences or systematic. We thus need to distinguish between individual human rights violations and situations where such violations are the norm. In addition, individual and large-scale violations may be perpetrated with varying degrees of complicity on the part of the State, or by private individuals or groups acting against the wishes of the authorities.

7. Some human rights violations can be taken up at international level; some cannot. United Nations practice is to consider gross and large-scale human rights violations, whether they are just isolated incidents or perpetrated systematically, as violations of the principle of respect for human rights, i.e. as being unquestionably an international problem which needs to be addressed internationally. Views are divided on the question whether individual cases should be discussed by international bodies.

8. Traditionally, it has been possible to discuss individual cases at the international level with the consent of the State in question. Such consent is normally provided for in international treaties (for example, the first Optional Protocol to the International Covenant on Civil and Political Rights, and the European Convention on Human Rights). In the absence of such a treaty, the States concerned have as a rule been most reluctant to discuss individual cases, although such discussion was considered lawful in principle if they gave their ad hoc consent (for example, within the Commission on Human Rights or even bilaterally). Even without the consent of the State concerned, individual cases could certainly be discussed by international bodies if they served to illustrate that gross and large-scale human rights violations were established practice (for example, the policy of apartheid).

9. Violations of the human rights of a citizen of one State within the jurisdiction of another can also be discussed at the international level, generally on a bilateral basis. In such cases, the State whose citizen is the injured party is entitled to grant him protection through its diplomatic and consular missions.

10. Other individual cases of human rights violations have been regarded as being essentially internal matters not suitable for discussion at the international level. The understanding has been that States can redress violations of national law without assistance from the international community.

11. Even when individual cases have been discussed at the international level, they have not normally been regarded as violations of the principle of respect for human rights but as infringements of a more specific international obligation. Now, however, individual cases are beginning to be discussed by international forums irrespective of the victim's nationality and without the consent of the State concerned. Sometimes, if the violations are flagrant,

they are regarded as violations of the principle of respect for human rights. This trend in international relations is becoming increasingly marked. In other words, the principle of respect for human rights is being applied more widely. However, no clear legal framework has been established for determining which individual cases can be discussed at the international level without the consent of the State concerned (bearing in mind what has been said above).

B. Criteria for the classification of human rights violations

12. Although it is relatively easy to classify human rights violations, it is difficult to draw lines between the different categories, since attempts to formulate criteria by which such violations could be categorized have generally been unsuccessful.

13. One of the most difficult problems is to distinguish between individual cases and large-scale human rights violations. While defining an individual case presents no difficulties, no criteria for the definition of large-scale violations can be established while large-scale violations are made up of individual cases; it is not possible to lay down how many individual cases constitute a large-scale violation.

14. Another difficulty is in distinguishing between gross and less serious human rights violations. This cannot be done with complete precision. According to the conclusions of the Maastricht Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, which took place between 11 and 15 March 1992, "the notion of gross violations of human rights and fundamental freedoms includes at least the following practices: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, disappearances, arbitrary and prolonged detention, and systematic discrimination". 1/ The conclusions state further that "violations of other human rights, including violations of economic, social and cultural rights, may also be gross and systematic in scope and nature, and must consequently be given all due attention in connection with the right to reparation". 2/

15. It will be fairly obvious that any list of gross human rights violations will include most large-scale violations: genocide, disappearances and the like. Torture or arbitrary and prolonged detention may be used on a single person and constitute an individual case, but genocide, slavery and slavery-like practices and arbitrary or mass executions are all large-scale human rights violations. In fact, experience shows that large-scale violations are always gross in character and gross violations of individuals' rights such as torture or arbitrary and prolonged detention, if unpunished, either lead to large-scale violations or indicate that such violations are already taking place.

16. The same may be said about systematic human rights violations. It is in theory possible for the human rights of an individual or small group of individuals to be violated systematically. If such violations continue unchecked, however, it is probably a sign that the overall human rights situation is poor. Systematic, large-scale human rights violations as a rule

are gross in character. This is particularly true of systematic discrimination, as mentioned in the conclusions of the Maastricht Seminar.

17. Human rights violations can be discussed by international bodies whether or not the State was involved in perpetrating them. Where sporadic violations are perpetrated by private individuals or groups of individuals, however, intergovernmental action is obviously not called for. The only exception would be those cases where a State attempts in some way to prevent those responsible being brought to justice. As a general rule, a State is not responsible for the actions of private individuals.

18. The question whether a human rights violation can be regarded as a State action is a fundamental one. Such a violation is regarded as a State action if it is perpetrated by State bodies or officials acting within their lawful authority or ultra vires (whether or not it is to be discussed at international level). The more senior the body or official, the greater the potential harm to human rights. Gross and large-scale human rights violations can also be perpetrated by local bodies and officials, but the threat posed by such violations is immeasurably greater when they are perpetrated by, for example, a parliament enacting racist legislation or by a cabinet pursuing repressive policies.

19. When discussing human rights violations ordered or sanctioned by Governments, it should be borne in mind that the term "Government" is used not in the narrow sense of the supreme executive body (Council of Ministers, Cabinet, etc.), but to denote all the higher organs of State, especially the legislative and executive ones, and the officials who work in them, since it is usually they who are the instigators when human rights violations occur. The term "ordered" should also be interpreted broadly to include legislation and various enforceable and specific enactments passed by the executive which promote human rights violations.

20. Human rights violations are not always perpetrated on official orders from Governments. Governments can also instigate human rights violations which are ostensibly perpetrated by private individuals (for example "death squads"), inciting people to commit such acts or turning a blind eye to them. In such cases, the biggest problem is to obtain proof of government complicity. This, however, is a topic for a separate investigation. Here we are concerned with the material rather than procedural aspects of the classification of human rights violations.

21. Governments may tacitly or officially sanction human rights violations perpetrated by private individuals. It follows that government complicity in human rights violations may take many forms. For the sake of brevity, all the forms of indirect complicity can be referred to as sanctioning. Like direct complicity, this must be regarded in the context of international relations as a human rights violation by the State.

22. The difficulty of categorizing human rights violations does not detract from the importance of attempting to do so. For all the practical difficulties involved in ascribing human rights violations to one category or another, it must be remembered that only on the basis of such classification can the most dangerous categories be identified and properly evaluated under international law by relating them to the notion of international crimes.

II. INTERNATIONAL CRIMES AND HUMAN RIGHTS

A. Definition of international crimes and types thereof

23. The division of violations of international law into international crimes and other breaches of international law arose after the Second World War. International crimes are the most serious violations of international law, causing loss or constituting a threat to the entire international community. They constitute breaches of an obligation erga omnes, that is they provide grounds for calling the offending State to account not only to any State which has suffered directly but to any other State. At the same time, not every breach of an obligation erga omnes can be regarded as an international crime. The decisive factor is what is infringed - the fundamental interests of the international community.

24. Since an international crime is a violation of international law, clearly it can be committed only by an entity subject to that law. While an international crime can in theory be committed by any subject of international law, it can in practice only be committed by an entity with the legal personality of a State. There is no officially recognized definition of an international crime, nor any officially accepted list of State actions which can be regarded as international crimes. The consensus is that there is no point in attempting to draw up an exhaustive list. Even if it were possible, it would be inappropriate at the present time, since international law is evolving and the need to add to the list could not be ruled out.

25. The by now well-known article 19 of the draft articles on State responsibility, which were provisionally adopted on first reading by the International Law Commission on the basis of a report by Professor R. Ago, gives the following definition of international crime and the more typical forms thereof:

> "2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime.
>
> "3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, inter alia, from:
>
> "(a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
>
> "(b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;

"(c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;

"(d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas". 3/

B. Human rights violations recognized as international crimes

26. Subparagraph 2 (c) of the article quoted above refers to human rights violations as international crimes and emphasizes their serious and widespread nature. The examples given are slavery, genocide and apartheid. Since the draft articles have not acquired the force of an international treaty, their provisions can only be regarded as proposals. At the same time, there is no doubt that article 19, and in particular subparagraph 2 (c), does to some extent reflect current practice. It is also clear from the wording of subparagraph 2 (c) that those grave and widespread human rights violations which can be regarded as international crimes will include not only slavery, genocide and apartheid, but also other human rights violations of comparable gravity.

27. The international treaties in force which classify particular forms of human rights violation as international crimes include the Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973). Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide reads as follows:

"The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law ...".

Article 1, paragraph 1, of the International Convention on the Suppression and Punishment of the Crime of Apartheid reads as follows:

"The States Parties to the present Convention declare that apartheid is a crime against humanity and that inhuman acts resulting from the policies and practices of apartheid and similar policies and practices of racial segregation and discrimination, as defined in article II of the Convention, are crimes violating the principles of international law, in particular the purposes and principles of the Charter of the United Nations, and constituting a serious threat to international peace and security."

28. The identification by international treaties of a particular human rights violation as an international crime does not necessarily imply that the classification is generally accepted; it implies only that the violation is regarded as an international crime by the States parties to the treaties concerned. If those treaties become truly universal, then clearly the classification will become generally accepted. However, there are virtually no truly universal international treaties (treaties to which all States are contracting parties), particularly in the field of human rights. At the same

time, the fact that a majority of States endorse the classification in question cannot be ignored by the minority who do not.

29. It is possible for a treaty to affirm an existing consensus that a particular form of human rights violation constitutes an international crime. This is the case with article 1 of the 1948 (Genocide) Convention, in which the Contracting Parties confirm that genocide is a crime under international law (quite apart from the fact that the vast majority of States are contracting parties to that Convention). It is also possible that the definition by an international treaty of a particular form of human rights violation as a crime under international law will in time become tacitly accepted by those States which are not contracting parties.

30. Indirect confirmation that the classification of certain forms of human rights violation as international crimes has acquired universal or quasi-universal character is provided by the following judgment given by the International Court of Justice on 5 February 1970 in the Barcelona Traction case, which included a consideration of obligations erga omnes:

> "Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination." 4/

31. As has already been noted, a breach of obligations erga omnes may not be a crime under international law, but a crime under international law always constitutes a breach of an obligation erga omnes. Since the Court clearly considered the obligations to outlaw aggression, genocide, slavery and racial discrimination to be of equal importance, its assumption must obviously have been that breaches of such obligations are also equally serious. But since aggression and genocide are generally recognized as international crimes, it is logical to conclude that slavery and racial discrimination, which the Court ranks alongside aggression and genocide, must also be regarded as international crimes.

III. THE NEED TO RECOGNIZE PARTICULAR TYPES OF GROSS AND LARGE-SCALE HUMAN RIGHTS VIOLATIONS AS INTERNATIONAL CRIMES

A. The need for such recognition

32. Article 19, subparagraph 2 (c), of the draft articles on State responsibility and the International Court of Justice judgments cited above show that the prevailing trend is to regard as international crimes not only genocide, apartheid, slavery and racial discrimination, but also other grave and large-scale human rights violations. The existence of such a trend suggests that the international community wants it formally enshrined as a principle of international law. Efforts to do so, however, are hampered by the lack of precise criteria for deciding which types of human rights violation should be regarded as international crimes. The problem cannot be solved by adding new types of gross and large-scale human rights violations to the list of actions which constitute international crimes, although there can

be no doubt that it would be useful to continue defining the types of human rights violation in question in specific terms.

33. Declaring gross and large-scale human rights violations perpetrated on the orders of a Government or with its sanction to be international crimes will establish a firm basis in international law for addressing, first, the grave international legal responsibility of the State in whose name a Government acts and, second, the question of the criminal responsibility of officials perpetrating such violations. Furthermore, such a basis will provide an opportunity, missing today, for more productive formulation of new, specific material and procedural obligations in the context of action to combat human rights violations. Work on the draft articles on State responsibility and the draft articles on the draft Code of Crimes Against the Peace and Security of Mankind is advancing extremely slowly, and the former obviously deals only with the responsibility of States, while those articles of the latter which were adopted on first reading deal only with the criminal responsibility of individuals.

34. The international community's demand that a particular type of human rights violation should be classified as an international crime would obviously not fully be met even if article 19, subparagraph 2 (c), of the draft articles on State responsibility were already in force in its present form. It is couched in terms too vague even for a general principle. A list of obligations in the field of human rights, violation of which would be regarded as an international crime, would need to be more detailed. To some extent, this could be facilitated by finally adopting and bringing into force the Code of Crimes Against the Peace and Security of Mankind, the draft of which classifies a number of human rights violations other than genocide and apartheid as international crimes. The draft includes the following words:

> "An individual who commits or orders the commission of any of the following violations of human rights:
>
> - murder
> - torture
> - establishing or maintaining over persons a status of slavery, servitude or forced labour
> - persecution on social, political, racial, religious or cultural grounds in a systematic manner or on a mass scale; or
> - deportation or forcible transfer of population shall, on conviction thereof, be sentenced [to ...]. 5/

35. Violations of this type, when perpetrated by officials, may be classed in the context of international relations as international crimes. At the same time, bringing the Code into force would not by itself imply recognition as a general principle that all gross and large-scale human rights violations ordered or sanctioned by a Government are international crimes, since the Code deals only with the criminal responsibility of individuals. Furthermore, the draft considers only systematic and large-scale human rights violations. The

actions cited in the draft, gross human rights violations though they are, could be perpetrated by officials on a large scale but on a single occasion: This does not detract from the threat they pose to the international community overall, and hence their classification as international crimes is warranted.

36. Crimes against the peace and security of mankind can be perpetrated by officials or private individuals. According to the commentary on the relevant article in the draft Code:

> "It is important to point out that the draft article does not confine possible perpetrators of the crimes to public officials or representatives alone. Admittedly, they would, in view of their official position, have far-reaching factual opportunity to commit the crimes covered by the draft article; yet the article does not rule out the possibility that private individuals with de facto power or organized in criminal gangs or groups might also commit the kind of systematic or mass violations of human rights covered by the article; in that case, their acts would come under the draft Code." 6/

37. Article IV of the Convention on the Prevention and Punishment of the Crime of Genocide states that:

> "Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

38. Article III of the International Convention on the Suppression and Punishment of the Crime of Apartheid provides that:

> "International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they:
>
> (a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention;
>
> (b) Directly abet, encourage or cooperate in the commission of the crime of apartheid."

39. The criminal responsibility of private individuals for actions of this kind may be no less than that of officials. However, only actions committed by public officials, irrespective of rank, can be international crimes as defined in article 19 of the draft articles on State responsibility, since it is only by virtue of their official position that such actions acquire the character of State action.

40. With regard to the broader aspects of the problem, it can be stated that actions recognized as socially dangerous on an international scale (in the light of international treaties or customs), when considered as actions perpetrated by individuals, necessarily imply that those individuals are criminally responsible. Such actions, including human rights violations, are

sometimes referred to as crimes against international law in the well-known wording of the Nürnberg Tribunal judgement of 30 September 1946:

> "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

They may include actions perpetrated by private individuals (such as pirates). Even where they constitute a gross and large-scale violation of human rights (for example, the activities of rebels, armed bands and so on), the only question which normally needs to be considered is that of the criminal responsibility of the culprits, not the responsibility of the State under international law. Possible exceptions are violations of this kind perpetrated in territories nominally controlled by a Government which in fact cannot enforce that control.

41. Where such an action is perpetrated by officials and the danger to the international community is of the magnitude indicated in article 19 of the draft articles on State responsibility, it must at international level be regarded as an international crime, that is, as a State action, entailing State responsibility. This also presumes criminal responsibility on the part of the culprits. A given action may thus be regarded both as a State action and as an action perpetrated by individuals, giving rise to two different types of responsibility. The same may be said of actions carried out by individuals who are not acting in an official capacity, but who are de facto in a position to influence State policy and use the State to perpetrate international crimes.

42. The main point of declaring gross and large-scale human rights violations ordered or sanctioned by a Government to be international crimes is to highlight the fact that the responsibility of the State cannot be kept separate from the criminal responsibility of the individuals who perpetrate such violations. Such a declaration could also to some extent help to prevent gross and large-scale human rights violations by acting as a warning to Governments and public officials. Such a warning would not absolutely guarantee that such violations will not occur, but it could not be ignored. An analogy is provided by the 1974 Definition of Aggression (General Assembly resolution 3314 (XXIX) of 14 December 1974, annex), which is regarded as a deterrent, albeit an imperfect one, to any potential aggressor.

B. Criteria for defining human rights violations as international crimes

43. Thus not all human rights violations, even when perpetrated by public officials, can be classed as international crimes or should in future be so classified. This raises the question whether the human rights violations which are so classified should be designated as a single international crime or as a number of crimes. The fact that genocide, apartheid and several other types of human rights violation are regarded as international crimes in their own right suggests that the latter course would be more appropriate. In reality, however, the one does not preclude the other. A particular category of human rights violation can take a number of forms. If each of these forms constitutes an international crime, then the category itself may also be so

characterized. In other words, by classifying a particular category of human rights violation as an international crime, we are emphasizing that any form which such a violation may take is also an international crime.

44. The following very general criteria may be applied when deciding whether a particular category of human rights violation constitutes an international crime:

(a) The gross and large-scale nature of any such violations (bearing in mind that any systematic violations come into the "large-scale" category);

(b) The perpetration of such violations on the direct order of a Government, or at its instigation, or with its connivance, or with the Government's approval after the fact, or with its sanction in some other form ("Government" being understood to mean the central authorities of the State which act in its name and are in control of the country).

45. Human rights violations of this kind, when perpetrated by private individuals who hold de facto power in the State or wield influence over the Government, may be considered to have been in one way or another sanctioned by the Government. The same applies to the actions of public officials at any level acting ultra vires, if no steps are taken by the State to call them to account. If such measures are taken, gross and large-scale human rights violations perpetrated by such individuals should not be regarded as international crimes, regardless of the concerns they arouse within the international community.

46. When deciding whether a given case of gross and large-scale human rights violations should be regarded as an international crime, it should be borne in mind that restrictions on human rights may be lawful, especially in emergency situations, and the degree of control by the Government over the situation prevailing in a country or part of it should also be taken into account.

IV. BASIC PROVISIONS OF A DRAFT DECLARATION DEFINING GROSS AND LARGE-SCALE VIOLATIONS OF HUMAN RIGHTS AS INTERNATIONAL CRIMES

A. General remarks

47. It would be appropriate to state in the form of a General Assembly declaration that any gross and large-scale human rights violation perpetrated on the orders of a Government or with its sanction constitutes an international crime. Since declarations adopted by the General Assembly have the status of recommendations, the statement of this position in the form of a declaration will not in itself imply that it will promptly become a principle of international law. Experience shows, however, that principles and norms declared in such a manner stand a better chance of eventually becoming universally recognized (especially if they are adopted by consensus) than if they are laid down in treaty form, and the declaration hastens the process of establishing it as a universal international legal obligation. It should also be borne in mind that reaching a consensus in drafting and approving a given declaration is often made easier by the fact that its terms are not legally binding.

48. The declaration must be concise, since it is to be a statement of principle, but it must also be more detailed than the existing provisions cited above concerning gross and large-scale human rights violations. In addition to the general statement of principle, it would seem appropriate to enumerate, in greater detail than hitherto, the more typical gross and large-scale human rights violations which constitute international crimes. It may also be useful to explain some of the terms used. It must also be borne in mind that not every violation of the principle of respect for human rights can be classified as an international crime.

B. Proposed core text of the draft declaration

49. A preamble, while important, can be drafted at a later date, if agreement can be reached on the basic wording of the draft. It would be premature to make even tentative suggestions for a preamble when it is not clear to what extent agreement will be reached on the main points of the draft declaration itself.

50. The text given below, although drafted with a view to ready acceptance as a set of draft articles, is provisional and is meant to suggest how the basic provisions of the declaration might be couched rather than indicating a specific wording for immediate discussion article by article.

Article 1

1. Gross and large-scale human rights violations committed on the orders of a Government or with its sanction are a grave violation of the principle of respect for human rights and constitute an international crime. Such violations shall be deemed to include principally the following:

(a) Murder, including arbitrary execution;

(b) Torture;

(c) Genocide;

(d) Apartheid;

(e) Discrimination on racial, national, ethnic, linguistic or religious grounds;

(f) Establishing or maintaining over persons the status of slavery, servitude or forced labour;

(g) Enforced or involuntary disappearances;

(h) Arbitrary and prolonged detention;

(i) Deportation or forcible transfer of population.

2. The provisions of paragraph 1 should not be regarded as detracting from the right of States to establish, in conformity with the norms of international law currently in force, lawful restrictions of human rights, especially in connection with the declaration of states of emergency or war.

Article 2

1. The term "Government" shall be understood to mean the central authorities, irrespective of their structure and designation, which control a country or the part or parts of a country where the human rights violations referred to in article 1 have occurred or are occurring.

2. A Government shall be deemed to have sanctioned such violations if, while in control of the country or of the part or parts of the country where they occurred, it instigated or connived in the perpetration of those violations and failed to bring the officials responsible to account, irrespective of the positions they occupied or if it directly or indirectly, officially or tacitly, sanctioned the human rights violations in question after the fact or was in some other way involved in their perpetration.

Article 3

1. States whose Governments order or sanction gross and large-scale human rights violations are responsible for those violations as for a crime under international law.

2. Persons who order, organize, directly perpetrate, connive in or sanction such violations, irrespective of whether they are acting in an official capacity or are able to influence the Government by virtue of the positions they occupy, shall be held criminally responsible at national or international level.

Notes

1/ Seminar on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Maastricht, 11-15 March 1992. SIM Special No. 12, p.17.

2/ Ibid.

3/ Yearbook of the International Law Commission, 1980, Volume II, Part 2, p. 32.

4/ Barcelona Traction case. International Court of Justice, Reports of Judgments, Advisory Opinions and Orders, Judgment of 5 February 1970, p. 33.

5/ Report of the International Law Commission on the work of its forty-third session, 29 April-19 June 1991. Official Records of the General Assembly, Forty-sixth session, Supplement No. 10 (A/46/10), p. 247.

6/ Ibid., p. 266.

Note for Reference: SIM are Dutch initials for the Study and Information Centre of Human Rights of the Netherlands Institute of Human Rights.